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SUBJECT: CONGRESSIONAL DEBATE OVER JUSTICE REFORM MOVING
FORWARD

¶1. Summary. The Mexican Senate passed judicial reform legislation that would facilitate transition to an oral trial system, give law enforcement officials broader search and seizure authority, allow consensual monitoring of telephone calls, and give police more responsibility for conducting investigations. Since the Senate modified several articles of the draft prior approved by the House of Deputies, the Senate version will return to the House for consideration in February. Several leftist parties and human rights activities described the legislation as a "step backwards," giving the State excessive authorities at the expense of the accused. Many jurists, however, believe effective implementation of the legislation will make the Mexican system work more transparently, expeditiously, and fairly.
End Summary.

¶2. President Calderon introduced a draft judicial reform bill to the Congress last March but it went through a series of modifications before coming up for a formal vote. The House of Deputies approved its version of the bill 301-94 December 12. PRD Deputies split their vote with the majority voting with PAN and PRI in support of the bill but other PRD Deputies voting with Convergencia, the Labor Party (PT) and PANAL against the bill. Mexican Senators from PAN, PRI, and the Green Party (PVEM) outvoted Senators from the Leftist Front (PRD, Convergencia, the Labor Party (PT) and PANAL) 80-27 December 13 to pass their own modified draft of the bill after a 20 hour debate. The Senate version returns to the House for consideration in February after the winter recess.

What Would it Change?

¶3. The bill passed by the Senate modifies some 12 articles of the Mexican Constitution relating to the judicial system. If ultimately passed into law, the bill envisions implementation of the changes taking place over 8 years. The most noteworthy reforms would include the following:

-- Oral Trials: Mexico's present judicial system is described as a mixed inquisitive/accusative system but predominantly the former with judges having no contact with the accused in over 80 percent of the cases they decide. Under this bill, Mexico's system would transition more rapidly to a fuller embrace of the oral, adversarial system. The victim would have additional rights to participate and receive restitution in the process, the accused would enjoy the presumption of innocence and a greater ability to confront their accusers and challenge the testimony of witnesses against them, and the police would assume wider authority for investigating cases, which currently are tightly controlled by prosecutors. The changes are designed to foster greater transparency, efficiency, objectivity and fairness in the rendering of decisions.

-- Expanded Search Authorities: The House draft had allowed for Federal Police to enter premises without a warrant in certain exigent circumstances if they believed an individual was in danger or a crime was underway inside. The Senate version raises the bar for entering without a warrant, requiring police to have clear evidence -- rather than mere belief -- of exigent circumstances. Under current law, there is no such exigent circumstance exception to the warrant requirement for entering a residence or other premises.

-- Access to Financial Documents: The House Draft had given the Attorney General's Office access to financial documents in the investigation of organized crime cases. The Senate amended this provision to require prosecutors obtain judicial authorization before they can access these documents.

-- Asset Forfeiture: The bill would make the necessary constitutional changes to allow the judicial forfeiture of assets that have been the instrument, object, or product of criminal activity, without the need of a criminal conviction of the property owner first. Mexico's lack of civil forfeiture procedures has seriously hampered its ability to take illicit assets away from criminal organizations, and with these changes, the GOM plans to establish a forfeiture regime similar to Colombia's law of "extincion de dominio."

-- Special Judges: Law enforcement authorities will have more immediate access to judges in seeking approval of searches and other investigatory measures.

-- Telephone Intercepts: Telephone conversations taped without a court order will be admissible as long as one of the parties to the call consents.

MEXICO 00006196 002 OF 002

-- Rights of the Accused: The bill clearly establishes, inter alia, the accused's right to remain silent and the right to information, a public trial, interpretation, and public defense.

Who Opposes the Bill and Why?

¶4. Most opposition to the bill is couched in human rights terms. Jose Luis Soberanes, the President of the Mexican government's semi-autonomous Human Rights Commission (CNDH) described it as a "step backwards for human rights in Mexico." Rosario Ibarra of the Labor Party complained the bill extended the police excessive authorities. She worried the bill gave a police force lacking in any appreciation for human rights the power to decide when a public demonstration might be considered as connected to organized crime and thus illegal. PAN Senator Alejandro Gonzalez Alcocer, President of the Senate's Judicial Committee, responded that in their defense of individual rights some tend to forget that citizens have a right to public security. President Calderon insisted "law enforcement is inseparable from respect for human rights" and that his government would "not stand for any violations of the law in the fight against crime."

¶5. Comment: Few would dispute the assertion that Mexico's justice system is broken. Poor defendants are detained for years on minor charges awaiting sentencing in a judicial system from which they are detached. Rich, well-connected defendants evade justice relying on corruption but also, in large measure, loopholes in the current system that tie the hands of law enforcement authorities seeking to conduct thorough and aggressive investigations. The reforms contemplated respond to many changes USG agencies have long supported through various programs, technical assistance, and joint cooperation in operational and case-related matters. They would render Mexico's system more transparent and give law enforcement authorities more tools to prosecute organized

crime cases. The House already approved a tougher version of the bill adopted by the Senate. The votes should still be there to approve the new version when it comes under consideration by the House in February. As the bill involves modifications to Mexico's constitution, if it is approved by the House in February, it will need to be passed by a majority of Mexico's 31 states before it goes to President Calderon for signature. End comment.

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